

**The Becket Fund for Religious Liberty**  
RLUIPA Constitutional Decisions

I. Overview of Constitutionality Decisions

A. Land-Use

1. Findings of Constitutionality

- a. *United States v. Maui*, \_\_\_ F. Supp. 2d \_\_\_, 2003 WL 23148864, (D. Haw. Dec. 29, 2003) (rejecting Enforcement, Commerce, Establishment Clause, and Tenth Amendment challenges)
- b. *Guru Nanak Sikh Society v. County of Sutter*, No. S-02-1785 (E.D.Cal. Nov. 19, 2003) (rejects Enforcement challenge) **NOTE**: Notice of appeal filed in 9<sup>th</sup> Circuit.
- c. *Primera Iglesia Bautista v. Broward County*, No. 01-6530 (S.D. Fla. Jan. 5, 2004) (adopting Nov. 7, 2003 Magistrate Report and Recommendation) (rejecting constitutionality challenge, adopting reasoning of *Freedom Baptist Church*).
- d. *Murphy v. Town of New Milford*, 289 F. Supp. 2d 87 (D. Conn. 2003) (rejecting Enforcement and Establishment Clause challenges). **NOTE**: on appeal to 2<sup>nd</sup> Circuit.
- e. *Westchester Day Sch. v. Village of Mamaroneck*, 280 F. Supp. 2d 230 (S.D.N.Y. 2003) (rejecting Enforcement, Commerce, and Establishment Clause, and Tenth Amendment challenges) **NOTE**: on appeal to 2<sup>nd</sup> Circuit, oral argument date March 1, 2004.
- f. *Life Teen, Inc. v. Yavapai County*, No. Civ. 01-1490-PCT-RCB (D. Ariz. Mar. 26, 2003) (rejecting Commerce Clause, Enforcement Clause, Separation-of-Powers, Tenth Amendment, and Establishment Clause challenges).
- g. *Christ Universal Mission Church v. City of Chicago*, No. 01-C-1429, 2002 U.S. Dist. LEXIS 22917 (N.D. Ill. Sept. 11, 2002) (rejecting constitutionality challenge, adopting reasoning of *Freedom Baptist Church*).
- h. *Freedom Baptist Church v. Tp. of Middletown*, 204 F. Supp. 2d 857 (E.D. Pa. 2002) (rejecting Enforcement, Commerce, and Establishment Clause challenges).

2. Suggestions of Constitutionality

- a. *Shepherd Montessori Center Milan v. Ann Arbor Charter Tp.*, Nos. 233484, 234300, \_\_\_ N.W.2d \_\_\_, 2003 WL 22520439 (Mich. Ct. App. Nov. 6, 2003)
- b. *Hale O Kaula v. Maui Planning Comm'n*, 223 F. Supp. 2d 1056, 1072 (D. Haw. 2002) (declining to address constitutionality of RLUIPA in detail, but concluding that “jurisdictional element” of § 2(a)(2)(B) precludes Commerce Clause challenge, and that § 2(a)(2)(C) “codifies the ‘individualized assessments’ doctrine”).
- c. *Cottonwood Christian Center v. City of Cypress*, 218 F. Supp. 2d 1203, 1221 n.7 (C.D. Cal. 2002) (noting that “RLUIPA would appear to have avoided the flaws of its predecessor RFRA, and be within Congress’s constitutional authority,” citing *Freedom Baptist Church*).

3. Findings of Unconstitutionality

- a. *Elsinore Christian Center v. City of Lake Elsinore*, 2003 WL 22724539 (C.D. Cal. Aug. 21, 2003) (striking down Sections 2(a) as applied through 2(a)(2)(B) and 2(a)(2)(C) as exceeding Congress’ power under the Commerce Clause and

the Enforcement Clause) (per Wilson, J.). **NOTE:** request for certification to 9<sup>th</sup> Circuit granted by the district court Dec. 17, 2003; unopposed petition for permission to appeal to 9<sup>th</sup> Circuit pending.

- b. *Missionaries of Charity, Brothers v. City of Los Angeles*, No. CV-01-8115-SVW (C.D. Cal. July 11, 2003) (incorporating *Elsinore* Enforcement Clause decision by reference, and requesting briefing on Commerce Clause constitutionality) (per Wilson, J.). **NOTE:** Case has been stayed pending Ninth Circuit's resolution of *Elsinore*.

## B. Institutionalized Persons

### 1. Findings of Constitutionality

- a. *Benning v. Georgia*, No. 602CV139 (S.D.Ga. Jan. 9, 2004) (rejecting Establishment Clause challenge and rejecting magistrate report and recommendation) **NOTE:** case certified for appeal to the 11<sup>th</sup> Circuit under FRCP 54(b).
- b. *Madison v. Riter*, No. 03-6362, \_\_\_ F.3d \_\_\_, 2003 WL 22883620 (4<sup>th</sup> Cir. Dec. 8, 2003) (rejecting Establishment Clause challenge)
- c. *Charles v. Verhagen*, No. 02-3572, \_\_\_ F.3d \_\_\_, 2003 WL 22455960 (7<sup>th</sup> Cir. Oct. 30, 2003) (rejecting Spending Clause, Establishment Clause, and Tenth Amendment challenges, but declining to reach Commerce Clause challenge).
- d. *Williams v. Bitner*, No. 1:CV-01-2271, 2003 WL 22272302, \_\_\_ F. Supp. 2d. \_\_\_ (M.D. Pa. Sept. 30, 2003) (rejecting Establishment Clause, Spending Clause, Tenth Amendment, and Eleventh Amendment challenges).
- e. *Sanabria v. Brown*, No. 99-4699 (D.N.J. June 5, 2003) (rejecting Spending Clause, Establishment Clause, Tenth Amendment, Eleventh Amendment, and Separation of Powers challenges, but declining to reach Commerce Clause challenge).
- f. *Gordon v. Pepe*, No. Civ. A-00-10453-RWZ, 2003 WL 1571712 (D. Mass. Mar. 6, 2003) (rejecting constitutionality challenge based on *Mayweathers* district court decision) (still in discovery at district court level).
- g. *Mayweathers v. Newland*, 314 F.3d 1062 (9<sup>th</sup> Cir 2002) (rejecting Spending Clause, Establishment Clause, Tenth Amendment, Eleventh Amendment, and Separation-of-Powers challenges), **cert. denied sub nom. Alameida v. Mayweathers**, No. 02-1655, \_\_\_ U.S. \_\_\_, 2003 WL 21180348, 71 USLW 3725 (U.S. Oct. 6, 2003).
- h. *Johnson v. Martin*, 223 F. Supp. 2d 820 (W.D. Mich. 2002) (rejecting Commerce, Spending, Establishment Clause, and Tenth Amendment challenges), **overruled by Cutter v. Wilkinson, infra**.
- i. *Gerhardt v. Lazaroff*, 221 F. Supp. 2d 827 (S.D. Ohio 2002) (rejecting Spending Clause, Establishment Clause, and Tenth Amendment challenges), **overruled by Cutter v. Wilkinson, infra**.
- j. *Taylor v. Cockrell*, No. H-00-2809 (S.D. Tex. Sept. 25, 2002), **vacated on mootness grounds, Taylor v. Groom**, No. 02-21316 (5<sup>th</sup> Cir. Aug. 26, 2003).
- k. *Love v. Evans*, No. 2:00-CV-91 (E.D. Ark. Aug. 8, 2001) (rejecting constitutionality challenge based on *Mayweathers* district court decision).

### 2. Findings of Unconstitutionality

- a. *Cutter v. Wilkinson*, Nos. 02-3270, 02-3299, 02-3301 \_\_\_ F.3d \_\_\_, 2003 WL 22513973 (6<sup>th</sup> Cir. Nov. 7, 2003) (finding RLUIPA Section 3 violates Establishment Clause). **NOTE**: request for rehearing *en banc* pending.
- b. *Al Ghashiyah v. Wis. Dept. of Corrections*, 250 F. Supp. 2d 1016 (E.D. Wis. Mar. 4, 2003) (same), **overruled** by *Charles v. Verhagen*, *supra*.
- c. *Madison v. Riter*, 240 F. Supp. 2d 566 (W.D. Va. 2003) (same) **overruled** by *Madison v. Riter*, *supra*.
- d. *In re Rowland*, No. HC4172 (Sup. Ct. Cal., Monterey Cy., July 31, 2002) (same) (appellate court affirmed trial court's denial of habeas petition without opinion).

C. Pending

1. *Midrash Sephardi v. Town of Surfside* (11<sup>th</sup> Cir.) (argument before Wilson, Sr. J. Kravitch, and visiting Sr. J. Goldberg of Int'l Trade Court on January 13, 2004) (land use case)
2. *Open Homes Fellowship v. Orange County*, No. 6:03-CV-943-ORL-31 (S.D.Fla.) (*amicus* constitutionality brief filed Jan. 2, 2004) (land use case)
3. *Terrero v. Watts*, No. CV202-134 (S.D. Ga.) (appeal to district court from recommendation of magistrate judge that RLUIPA and RFRA violate the Establishment Clause) (prisoner case)
4. *Castle Hills First Baptist Church v. City of Castle Hills*, No. SA-01-CA-1149-HG (W.D. Tex.) (oral argument on Oct. 22, 2003 on cross-motions for partial summary judgment, including constitutionality) (land use case).

II. Recent Decisions Applying the Act

A. *Shepherd Montessori Center Milan v. Ann Arbor Charter Tp.*, Nos. 233484, 234300, \_\_\_ N.W.2d \_\_\_, 2003 WL 22520439 (Mich. Ct. App. Nov. 6, 2003) (finding genuine issues of material fact on "substantial burden" under RLUIPA Section 2(a), and on "similarly situated" under Equal Protection Clause).

B. *C.L.U.B. v. City of Chicago*, 342 F.3d 752 (7<sup>th</sup> Cir. 2003) (construing "substantial burden" narrowly – zoning law must render worship "effectively impracticable").

C. Pending

1. *San Jose Christian College v. City of Morgan Hill*, No. 02-15693 (9<sup>th</sup> Cir.) (argument before Canby, Kleinfeld, & Rawlinson on May 14, 2003).
2. *Grace United Methodist v. Cheyenne* (opening brief due end of January)
3. *Lighthouse Institute v. City of Long Branch*, No. 03-2343 (3d Cir.) (briefing complete, argument scheduled for either 2<sup>nd</sup> or 4<sup>th</sup> week February).